

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:	§	Chapter 11
	§	
EASTERN LIVESTOCK CO., LLC	§	Case No. 10-93904-BHL-11
	§	
Debtor.	§	Hon. Basil H. Lorch III

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

FRIONA INDUSTRIES, L.P.,

Plaintiff,

v.

EASTERN LIVESTOCK CO., INC., FIFTH
THIRD BANK, ALLEN DIETRICH,
FARMERS BANK OF CARNEGIE, TOMMY
BYNUM d/b/a BBL CATTLE, DIAMOND B
RANCHES, INC., MOSELEY CATTLE
AUCTION, LLC, SOUTHEAST LIVESTOCK
EXCHANGE, LLC, SUPERIOR LIVESTOCK
AUCTION, INC., TURNER COUNTY STOCK
YARDS, INC., PAUL KROPH, d/b/a K & K
FARMS, AMOS KROPH, d/b/a K & K
FARMS, ATHENS LIVESTOCK, BLUE
GRASS STOCKYARDS, LLC, EAST
TENNESSEE LIVE STOCK CENTER, INC.,
EDDIE EICKIE, GABRIEL MORENO,
AND CHUCK MURDOCH d/b/a
C&M CATTLE,

Defendants,

and

CACTUS GROWERS, INC.,

Intervenor,

v.

EASTERN LIVESTOCK COMPANY, INC.
GENE SHIPMAN, EASTERN TENNESSEE
LIVESTOCK CENTER, INC., ALTON

ADVERSARY NO. _____



DARNELL d/b/a DARNELL ALTON BARN,
DE CORDOVA CATTLE COMPANY,
SUPERIOR LIVESTOCK AUCTION, INC.,
STOCKMAN OKLAHOMA LIVESTOCK
MARKETING, INC., NICHOLS LIVESTOCK,
FIFTH THIRD BANK, CHESTER BAY
TRUCKING, EAST WEST TRUCKING CO.,
LLC., IKE'S TRUCKING, INC., PARKER
TRUCKING, NEWMAN TRUCKING, CHASE
CATTLE COMPANY, JC POWELL d/b/a
JC POWELL TRUCKING, JANE, LLC,
H & B TRUCKING, LLC, RON NEUFELD,
CRYSTAL'S LIVESTOCK EXPRESS,
BOMHAK TRUCKING, REITER TRUCKING,
INGLAND TRUCKING, LEON BOGARD,
PARKS LIVESTOCK, DOUBLE V. EXPRESS,
and LLT TRUCKING, INC.

Defendants,

and

J & F OKLAHOMA HOLDINGS, INC.,

Intervenor,

v.

EASTERN LIVESTOCK CO., LLC, FIFTH
THIRD BANK, SOUTHEAST LIVESTOCK
EXCHANGE, LLC, SUPERIOR LIVESTOCK
AUCTION, INC., TURNER COUNTY STOCK
YARDS, INC., CPC LIVESTOCK, LLC,
NORTHERN LIVESTOCK, believed to
be doing business as BILLINGS
LIVESTOCK COMMISSION COMPANY,
LLC, GIBSON CATTLE COMPANY, L.L.C.,
JOPLIN REGIONAL STOCKYARDS, INC.,
PIEDMONT LIVESTOCK COMPANY, INC.,
DON GREEN, GARY SEALS LIVESTOCK,
WILLIAM BUSH, TOM SVOBODA, CLF
FEEDERS, RANDY HOOVER & SON, LLC
and OTTO HAMBELTON,

Defendants.

**NOTICE OF REMOVAL AND REFFERAL OF CIVIL ACTION
TO BANKRUPTCY COURT AND MOTION TO TRANSFER VENUE**

TO THE HONORABLE COURT:

Plaintiff, Friona Industries, L.P. ("Friona"), and Intervenor Plaintiffs, Cactus Growers, Inc. ("Cactus") and J&F Oklahoma, Inc. ("J&F"), jointly file this Notice of Removal of Civil Action to Bankruptcy Court and Motion to Transfer Venue and would show the Court as follows:

A. NOTICE OF REMOVAL

1. This notice is filed under Bankruptcy Rule 9027 and 28 U.S.C. §§ 157, 1452 and 1334, as applicable, and under the Order of Reference of Bankruptcy Cases and Proceedings filed among the records of the United States District Court for the Northern District of Texas. Upon removal and referral of the civil action, this litigation will constitute an adversary proceeding that is a core proceeding under 28 U.S.C. §157(K) and/or (O). Accordingly, this bankruptcy court has jurisdiction over this adversary proceeding.

2. On or about November 11, 2010, Friona filed a Complaint in the Nature of an Interpleader, under Case No. 2:10-cv-00266-J, styled *Friona Industries, L.P. vs. Eastern Livestock Co., Inc., et al*, in the United States District Court for the Northern District of Texas, Amarillo Division (the "Interpleader Action"). Thereafter, on November 19, 2010, Cactus intervened in the Interpleader Action and filed a Complaint in the Nature of an Interpleader, and on November 30, 2010, J&F intervened in the Interpleader Action and filed a Complaint in the Nature of an Interpleader. The District Court in the Interpleader Action ordered the District Clerk for the Northern District of Texas (the "District Clerk") to accept funds tendered by Friona, Cactus, and J&F as interpleader funds (the "Interpleader Funds"). The District Clerk now holds the Interpleader Funds, plus accrued interest, subject to order of the court having jurisdiction of the Interpleader Action.

3. On December 6, 2010, petitioning creditors filed an involuntary petition under chapters 3 and 11 of the Bankruptcy Code commencing an involuntary bankruptcy proceeding in the

Southern District of Indiana, New Albany Division, Case No. 10-93904 (the "Indiana Bankruptcy"), naming Eastern Livestock Co., L.L.C. ("Eastern") as Debtor. Eastern was and is a defendant in the Interpleader Action.

4. On December 27, 2010, an order was entered in the Indiana Bankruptcy appointing a Chapter 11 Trustee and on December 28, 2010, an order for relief was entered in the Indiana Bankruptcy.

5. On December 28, 2010, the District Court in the Interpleader Action signed an order that stayed the Interpleader Action until further Order, and counsel of record were directed to inform the District Court if a lift stay order was entered by the Indiana Bankruptcy Court. On March 1, 2011, an Agreed Entry was filed in the Indiana Bankruptcy in which the necessary parties stipulated to limited relief from the automatic stay to allow the removal and transfer of the Interpleader Action to the Indiana Bankruptcy Court. On March 9, 2011, the Indiana Bankruptcy Court entered an order approving the Agreed Entry and modifying the automatic stay to allow the removal and transfer of the Interpleader Action.

6. In accordance with Bankruptcy Rule 9027, a "notice of removal shall be filed with the clerk for the district and division within which is located the state or federal court where the civil action is pending." As the civil action is pending in the United States District Court for the Northern District of Texas, Amarillo Division, it is proper to file this pleading with the clerk of the bankruptcy court in the Northern District of Texas, Amarillo Division.

7. This Court has jurisdiction "of all civil proceedings arising under title 11, or arising in or related to a case under title 11." 28 U.S.C. § 1334(b). For "related to" jurisdiction to attach to the Complaint, "the anticipated outcome of the action must both (1) alter the rights, obligations, and choices of action of the debtor, and (2) have an effect on the administration of the estate." *In re*

Bissonnet Investments, LLC, 320 F.3d 520, 525 (5th Cir. 2003). The Interpleader Action is “related to” the Indiana Bankruptcy because it concerns the right to certain interplead funds, of which the Debtor is a claimant, and the result may “(1) alter the rights, obligations, and choices of action of the debtor, and (2) have an effect on the administration of the estate.” *In re Bissonnet Investments, LLC*, 320 F.3d 520, 525 (5th Cir. 2003).

8. Copies of all the Interpleader Action pleadings and processes are being filed contemporaneously with this Notice. Exhibit “A” attached to this Notice is the docket sheet from the Interpleader Action identifying those pleadings and processes.

9. Attached to this Notice as Exhibit “B” is a Certificate of Interested Parties.

B. MOTION TO TRANSFER VENUE

10. The disposition of certain contested matters in the Indiana Bankruptcy may be potentially dispositive of some of the claims or interests asserted in the Interpleader Action – thus, it is in the interest of judicial economy and consistent rulings on matters pertaining to the administration of the bankruptcy estate for matters in which the Debtor has an interest to be removed to the United State Bankruptcy Court for the Southern District of Indiana, New Albany Division, where the underlying Eastern bankruptcy case is now pending.

11. A motion to transfer venue in a “proceeding under title 11” is governed by 28 U.S.C. § 1412. Alternatively, 28 U.S.C § 1404(a) governs a motion to transfer venue for a case “related to a proceeding under title 11.” *Edge Petroleum Operating Co., Inc. v. Duke Energy Trading & Mktg., L.L.C.*, 311 B.R. 740, 743 n.1 (S.D.Tex. 2003). “Regardless the inquiry is the same under either statute so the Court’s analysis would not be any different” under 28 U.S.C. § 1412 or 28 U.S.C. § 1404(a). *Id.*

12. 28 U.S.C. § 1404(a) also requires that the action sought to be transferred could have been originally brought in the district in which transfer is sought. *Sabre Tech., L.P. d/b/a Skyline Displays of Houston v. TSM Skyline Exhibits, Inc., et al.*, WL4330897 at *9 (S.D.Tex. 2008). Eastern is a Kentucky limited liability company with its principal place of business in New Albany, Indiana. The Interpleader Action could have been brought in New Albany, Indiana in accordance with 28 U.S.C. §§1335 and 1397. Section 1397 provides that “[a]ny civil action of interpleader or in the nature of interpleader under section 1335 of this title may be brought in the judicial district in which one or more of the claimants reside.” 28 U.S.C. §1397. Because Eastern resides in New Albany, Indiana, the Interpleader Action could have been brought there.

13. Also, “under 28 U.S.C. § 1409(a), a proceeding arising under or related to a bankruptcy may be brought in the district where the bankruptcy proceeding is pending.” *Id.* Therefore, because the Southern District of Indiana is the district in which Eastern’s principal place of business is located, as well as the district in which Indiana Bankruptcy is pending, the New Albany Division of the Southern District of Indiana would have been a proper venue for the Interpleader Action to have been originally filed.

14. Therefore, the undersigned parties request that this Court transfer this adversary proceeding to the United States Bankruptcy Court for the Southern District of Indiana, New Albany Division.

WHEREFORE, PREMISES CONSIDERED, Movants respectfully requests that this Court grant their Motion to Transfer Venue, and order that the Interpleader Action be transferred to the United States Bankruptcy Court for the Southern District of Indiana, New Albany Division, together with the Interpleader Funds.

Respectfully submitted,

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ATTORNEYS FOR MOVANTS.

CERTIFICATE OF SERVICE

I hereby certify that on **March 22, 2011**, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system will send a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept service of this document by electronic means. The following attorneys will be notified of the filing of this document via email and U.S. Mail.

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CACTUS GROWERS, INC.
CHASE CATTLE COMPANY
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JANE, LLC
JC POWELL d/b/a JC POWELL TRUCKING
JOPLIN REGIONAL STOCKYARDS, INC.
LEON BOGARD
LLT TRUCKING, INC.
MOSELEY CATTLE AUCTION, LLC
NEWMAN TRUCKING
NICHOLS LIVESTOCK
NORTHERN LIVESTOCK, believed to be doing business as BILLINGS LIVESTOCK COMMISSION
COMPANY LLC
OTTO HAMBELTON
PARKER TRUCKING
PARKS LIVESTOCK
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